of chattels. The other English cases involved agreements as to the prices to be charged upon resale.[6] Although these might fairly be said to be restrictive agreements restricting the use of the thing sold, they infringe the policy of the law as to freedom of trade in chattels to such extent that equity might well refuse to give them effect as creating equitable servitudes. In *Barker* v. *Stickney* [7] the purchaser of a copyright covenanted to pay certain royalties. They were not imposed by way of a charge upon the copyright and the court distinguishing the Werderman case declined to allow an equitable servitude.

In the United States the courts began by enforcing restrictive agreements with respect to the use of chattels in case of patents and copyrights.[8] But one of the cases [9] involved, along with a restriction on use, a restriction as to price on resale, and the federal courts are now definitely committed to the doctrine, also established in England, that such agreements will not be enforced against third persons who take with notice.[10] In so deciding they have sometimes argued against allowing equitable servitudes in chattels at all.[11] But in *Henry* v. *Dick Co.*[12] a restriction on use was enforced against third persons who took a patented article with notice, and *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*,[13] which purports to overrule *Henry* v. *Dick Co.*, was a case in which the restriction on use went beyond what was reasonable in order to secure the advantage of the patent on the thing patented and hence was one in which equity, in the case of a restriction upon the use of land, would have refused to allow an equitable servitude.

While Sir George Jessel's doctrine of servitudes in chattels on the analogy of *Tulk* v. *Moxhay* has appeared to fare hard at the hands of the courts in subsequent cases none of the cases have been such as to present a fair occasion for applying it. If the instinct of common-law lawyers is against such servitudes, the instinct of the mercantile community no less clearly calls for them, and within the recognized limits of the doctrine of equitable servitudes in general the preconceptions of lawyers may yet be found yielding to the exigencies of trade.

DOCTRINE OF *ULTRA VIRES* AS APPLIED TO BUSINESS CORPORATIONS. — In the case of *Cotman* v. *Brougham* [1] the memorandum of association of the company in question contained an objects clause with

any theory of equitable servitude. In this respect these cases are analogous to those in which equity imposes a constructive trust to prevent unjust enrichment of one who has promised for a consideration in hand to do something with respect to a thing which is to come into existence in the future. 3 POM. EQ. JUR., § 1288.

[6] Dunlop Pneumatic Tyre Co. *v.* Selfridge, [1915] A. C. 847; McGruther *v.* Pitcher, [1904] 2 Ch. 306; Taddy *v.* Sterious, [1904] 1 Ch. 354.

[7] [1918] 2 K. B. 356.

[8] New York Bank Note Co. *v.* Hamilton Bank Note Co., 28 App. Div. 411, 50 N. Y. Supp. 1093; Murphy *v.* Christian Press Publishing Co., 38 App. Div. 426, 56 N. Y. Supp. 597.

[9] Murphy *v.* Christian Press Publishing Co., *supra.*

[10] Bauer *v.* O'Donnell, 229 U. S. 1; Bobbs-Merrill *v.* Straus, 210 U. S. 339; Scribners *v.* Straus, 210 U. S. 352.

[11] Dr. Miles Medical Co. *v.* Park, 220 U. S. 373; Park *v.* Hartman, 153 Fed. 24.

[12] 224 U. S. 1. [13] 243 U. S. 502.

[1] [1918] A. C. 514.

thirty subclauses enabling the company to carry on almost every conceivable kind of business which a company could adopt, and provided that "the objects set forth in any sub-clause shall not, except when the context expressly so requires, be in any wise limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the company. None of such sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world, and notwithstanding that the business, undertaking, property or acts proposed to be transacted, acquired, dealt with or performed do not fall within the objects of the first sub-clause of this clause." The company sought to escape liability for an act done in its name by its managers on the ground that the act was *ultra vires*. The court held that, under such a memorandum, the act was not *ultra vires*. The circumstances of this case direct attention to the doctrine of *ultra vires*, as applied to business corporations (or companies, if the British word be used).

If exceptional cases are put aside, we may say that a business corporation is predicated upon the association of a number of human beings who have associated to accomplish some business object or objects. In the nature of things, an unchartered association might readily have been recognized by the courts as a legal unit, and incorporation simply gives legal confirmation to the popular conception of a business unit. Statutes relating to the formation of corporations require that the incorporators state the objects, or purposes, or powers of the corporation. The statement of the objects, or purposes, or powers results in a definition of the scope of contemplated corporate activity. Then comes the question: If human beings, in the name of the corporation, do an act outside the scope of contemplated corporate activity, shall corporate significance be given to that act, or shall it be treated simply as the act of the human beings? The courts are very apt to deal with this question as though it were a question at common law, but, it is submitted, it is always a question of statutory construction. The power to create a corporation — to recognize the business unit as a legal unit — is in the legislature, and it is for the legislature to say what legal capacities this legal unit shall have. The legislature might think it wise that no act done outside the scope of contemplated corporate activity should have any corporate significance. Or the legislature might think it wise that some acts done in the name of the corporation by its managers outside the scope of contemplated corporate activity should result in corporate liabilities or rights, even though the doing of such acts would be a wrong as between the corporation and the state, and also would be a wrong as between the managers of the corporation and its stockholders and creditors. The refusal to give any corporate significance to acts done outside the scope of contemplated corporate activity frequently leads to results that are, from the business point of view, shocking; and therefore courts should incline to take the other construction of the legislative intent. But it is to be recognized that, if the legislature shows the intent that no corporate significance shall be given to any acts out-

side the scope of contemplated corporate activity, the courts must give effect to that intent.

In England, corporate significance is given to acts outside the scope of contemplated corporate activity in the case of corporations created by the Crown, pursuant to the common law. See *British South Africa Co.* v. *De Beers Consolidated Mines, Ltd.*[2] But in *Ashbury Railway Carriage & Iron Co.* v. *Riche*,[3] decided in 1875, Lord Cairns examined the provisions of the Joint Stock Companies Act of 1862 and concluded that a company formed under that statute had no legal capacity to do an act outside the scope of contemplated corporate activity. Therefore, although a contract made in the name of the company, for its benefit, by its directors, and with the sanction of all its shareholders had not been performed, the company was not exposed to any liability. No corporate significance was given to the act of making the contract. This decision has so long governed later English decisions (and has had such a great influence in this country with judges who did not pause to examine the statutory provisions regulating the corporations before them, and who treated this decision as a decision at the common law) that it is a rash act to criticize it. But it is submitted that the provisions of the Joint Stock Companies Act of 1862 did not show an intent by the legislature thus sharply to limit the legal capacity (as distinguished from the legal authority) of companies formed under its provisions. One would have supposed that the rule of legal capacity applicable to corporations at the common law would have been applied to statutory corporations, unless the legislature had plainly indicated its intent to the contrary.

Such a decision makes it a dangerous matter to enter into a contract which is, in form, with a company. Upon those who propose to contract with companies, a caveat is served, and this reacts upon companies who, of course, wish persons to feel safe in making contracts with them. The effect upon the business of the country is shown by extracts from the opinions in the principal case.

By Lord Parker: "Experience soon showed that persons who transact business with companies do not like having to depend on inference when the validity of a proposed transaction is in question. Even a power to borrow money could not always be safely inferred, much less such a power as that of underwriting shares in another company. Thus arose the practice of specifying powers as objects. . . . But even thus, a person proposing to deal with a company could not be absolutely safe, for powers specified as objects might be read as ancillary to and exercisable only for the purpose of attaining what might be held to be the company's main or paramount object, and on this construction no one could be quite certain whether the Court would not hold any proposed transaction to be *ultra vires*. At any rate, all the surrounding circumstances would require investigation. Fresh clauses were framed to meet this difficulty, and the result is the modern memorandum of association with its multifarious list of objects and powers specified as objects and its clauses designed to prevent any specified object being read as ancillary to some other object."

[2] [1910] 1 Ch. 354. [3] L. R. 7 H. L. 653.

By Lord Wrenbury: "It has arrived now at a point at which the fact is that the function of the memorandum is taken to be, not to specify, not to disclose, but to bury beneath a mass of words the real object or objects of the company with the intent that every conceivable form of activity shall be found included somewhere within its terms."

If the contract with a corporation is of such a nature that it would be valid if made with a human being, and if it is made in behalf of the corporation by, or by the authority of, those human beings in whom are vested the powers of corporate management, the corporation should be bound thereby. This rule may perhaps call for some qualifications, particularly in the case of public-service corporations, but it is submitted that it is the wise general rule. With such a rule established by statute, it will then be feasible to insist upon a statement of objects in incorporation papers which will really define the contemplated venture and will, therefore, limit the risks which the managers have, as between themselves and the stockholders, the right to run. On the one hand, it is undesirable that persons should be made timid with regard to contracting with corporations; on the other hand, it is undesirable that stockholders should go into a blind pool. A statute can be drawn so as to avoid both evils, and it is not improbable that the decision in the principal case will be followed by statutory changes.

COMPENSATION FOR SPECIAL SERVICES RENDERED BY A MUNICIPAL CORPORATION. — If an individual carries on a business which involves a city in extraordinary expense, the city may by ordinance impose the expense upon the individual; thus, where the construction of street railroad tracks increased the difficulty and expense of cleaning the streets it was held permissible for the city to require the railroad to clean the space between its rails.[1] And where a business requires inspection by a city department, the person carrying on the business may be required to take out a license and pay a fee to cover the expense of inspection,[2] though not to impose a fee greater than such cost.[3]

If, however, there is no actual requirement of expense, but the city renders a special service, as, for instance, by guarding premises against disorder or against fire, a problem of another sort is presented. May the city exact compensation for its services? On principle, one would be inclined to say, No, if the service is rendered from a public motive; Yes, if individual benefit is the controlling motive. Taxation covers all public purposes, and should pay for expenses legally incurred on behalf of the public; but taxation to pay for private expenditure is illegal and therefore money raised by taxation should not be used to pay for private service. The few authorities are not at all in agreement. If, for instance, a city by ordinance requires the placing of a policeman at a theatre, the purpose must be a public one, and no compensation should be exacted from the owner; and it was so held in the earliest case.[4] So,

[1] Chicago Union Traction Co. *v.* Chicago, 199 Ill. 259, 65 N. E. 451.
[2] Fort Smith *v.* Hunt, 72 Ark. 556, 82 S. W. 163.
[3] Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.
[4] Waters *v.* Leech, 3 Ark. 110.